

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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PAUL B. DAVIS,

Plaintiff

-against-

21-cv-03663

CORY ARCANGEL, and DOES 1-10,

Defendants.
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**FRCP Rule 4 Motion for Extension of
Time to Serve Complaint**

Plaintiff Paul B. Davis, by and through undersigned counsel Mazzola Lindstrom LLP, hereby respectfully moves the court for a ninety-day extension of the current deadline for service of process and the filing of affidavits of service applicable under Rule 4 of the Federal Rules of Civil Procedure, after having been informed by counsel for defendant Cory Arcangel by letter dated September 20, 2021 that defendant Arcangel currently resides and is domiciled in Norway, so must be served via Hague Convention protocols.

Defendant Arcangel's website indicates that he lives and works in both Brooklyn and Norway (see, <https://coryarcangel.com/about/>). He maintains a Brooklyn business address and a New York driver's license with an address in Gansevoort, New York. Plaintiff has delivered the Complaint, and waivers of service and notice pursuant to Fed. R. Civ. P. 4(d) to defendant's Brooklyn, New York and Stavanger, Norway addresses,¹ and has asked defendant's counsel to advise if defendant will waive formal service of the Complaint, and/or agree to enlarge the time

¹ Plaintiff is also obtaining a Summons for service to Defendant's Gansevoort address.

for plaintiff to serve the Complaint in Norway via the Hague Convention. Defendant's counsel has advised that they have yet to get in touch with defendant and therefore have no position on either issue.

Rather than consume the Court's and the parties' resources with motion practice regarding the delivery of the Complaint, and waiver of service pursuant to Fed. R. Civ. P. 4(d) to defendant's Brooklyn address, plaintiff will accept defense counsel's demand that service be made using Hague Convention protocols.

Plaintiff has arranged for translation of the Complaint into Norwegian, and transmittal of the Complaint and necessary ancillary documents to the central authority for effectuating service in Norway. It is estimated that completion of service of the Complaint on defendant in Norway will take approximately sixty to ninety days. Based on the June 29, 2021 filing date of the Complaint, the ninety-day period for service will expire on September 27, 2021. However, given the requirement to have the Complaint translated and processed through the Norwegian authorities, it will not be possible to complete this process and have the Complaint served on defendant in Norway by September 27, 2021.

There is ambiguity in Rule 4(m) as to whether this motion is even necessary,² as it appears that the 90-day rule does not apply to Hague Convention protocol cases. Nonetheless, in an abundance of caution, plaintiff has arranged for service of the complaint through the Hague

² FRCP Rule 4 (m) "**Time Limit for Service.** If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A)."

Convention service protocol, and requests that he be afforded an additional ninety days to effectuate service.

WHEREFORE, plaintiff Paul B. Davis respectfully requests that this motion be granted and that he be given an additional ninety days, up to and including December 27, 2021, to perfect service of the Complaint upon defendant Cory Arcangel in this matter. An Initial Conference currently is scheduled for October 19, 2021 at 11:00 a.m. Plaintiff submits herewith a [Proposed] Amended Initial Conference Order, in the event the Court wishes to reschedule the Initial Conference to a later date.

Dated: New York, New York
September 24, 2021

Respectfully submitted,

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By: /s/ Wendy J. Lindstrom

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